

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

UGURCAN MAVRUK, AND IMADETTIN  
MAVRUK,

Plaintiff,

v.

850 CARONA ENTERPRISES, INC. d/b/a  
ATLANTIC GAS STATION,  
SELIM SAVASCIOGLU, AND PERI SOM as  
Heir of the Estate of KAYHAN SOM

Defendants.

Case No. 2:18-CV-00843

**ANSWER**

Defendants, 850 Carona Enterprises, Inc. d/b/a Atlantic Gas Station(hereinafter referred to as “Atlantic”), Selim Savascioglu (hereinafter referred to as “Selim”), and Peri Som as Heir of the Estate of KAYHAN SOM (hereinafter referred to as “Peri”), (collectively “Defendants”), by their attorneys, Varacalli & Hamra, LLP, for their Answer to the Complaint herein allege as follows:

**NATURE OF THE ACTION**

1. Defendants deny the allegations contained in paragraph 1 of the Complaint.
2. Defendants admit that Plaintiffs purport to proceed as set forth in paragraph 2, but deny the Plaintiffs are entitled to any relief whatsoever and deny any factual allegations and claims contained therein.

**JURISDICTION**

3. Defendants admit the allegations contained in paragraph 3 of the Complaint, as to subject matter Jurisdiction over this case pursuant to the federal claims, but deny supplemental Jurisdiction over the NYLL claims.

**VENUE**

4. Defendants admit the allegations contained in paragraph 4 of the Complaint.

**THE PARTIES**

5. Defendants lack knowledge as to the allegations contained in paragraph 5 of the Complaint.

6. Defendants deny the allegations contained in paragraph 6 of the Complaint.

7. Defendants lack knowledge as to the allegations contained in paragraph 7 of the Complaint.

8. Defendants deny the allegations contained in paragraph 8 of the Complaint.

9. Defendants deny the allegations contained in paragraph 9 of the Complaint.

10. Defendants deny the allegations contained in paragraph 10 of the Complaint.

11. Defendants admit the allegations contained in paragraph 11 of the Complaint.

12. Defendants deny the allegations contained in paragraph 12 of the Complaint.

13. Defendants admit the allegations contained in paragraph 13 of the Complaint.

14. Defendants deny the allegations contained in paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in paragraph 20 of the Complaint.

21. Defendants deny the allegations contained in paragraph 21 of the Complaint.

22. Defendants admit the allegations contained in paragraph 22 of the Complaint.

23. Defendants lack knowledge as to the allegations contained in paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in paragraph 24 of the Complaint.

- 25. Defendants deny the allegations contained in paragraph 25 of the Complaint.
- 26. Defendants deny the allegations contained in paragraph 26 of the Complaint.
- 27. Defendants deny the allegations contained in paragraph 27 of the Complaint.

**FACTUAL ALLEGATIONS**

- 28. Defendants deny the allegations contained in paragraph 28 of the Complaint.
- 29. Defendants deny the allegations contained in paragraph 29 of the Complaint.
- 30. Defendants deny the allegations contained in paragraph 30 of the Complaint.
- 31. Defendants deny the allegations contained in paragraph 31 of the Complaint.
- 32. Defendants deny the allegations contained in paragraph 32 of the Complaint.
- 33. Defendants deny the allegations contained in paragraph 33 of the Complaint.
- 34. Defendants deny the allegations contained in paragraph 34 of the Complaint.
- 35. Defendants deny the allegations contained in paragraph 35 of the Complaint.
- 36. Defendants deny the allegations contained in paragraph 36 of the Complaint.
- 37. Defendants deny the allegations contained in paragraph 37 of the Complaint.
- 38. Defendants deny the allegations contained in paragraph 38 of the Complaint.
- 39. Defendants deny the allegations contained in paragraph 39 of the Complaint.
- 40. Defendants deny the allegations contained in paragraph 40 of the Complaint.
- 41. Defendants deny the allegations contained in paragraph 41 of the Complaint.
- 42. Defendants deny the allegations contained in paragraph 42 of the Complaint.
- 43. Defendants deny the allegations contained in paragraph 43 of the Complaint.
- 44. Defendants deny the allegations contained in paragraph 44 of the Complaint.
- 45. Defendants deny the allegations contained in paragraph 45 of the Complaint.
- 46. Defendants deny the allegations contained in paragraph 46 of the Complaint.

- 47. Defendants deny the allegations contained in paragraph 47 of the Complaint.
- 48. Defendants deny the allegations contained in paragraph 48 of the Complaint.
- 49. Defendants deny the allegations contained in paragraph 49 of the Complaint.
- 50. Defendants deny the allegations contained in paragraph 50 of the Complaint.
- 51. Defendants deny the allegations contained in paragraph 51 of the Complaint.

**FIRST CLAIM**  
**(UNPAID OVERTIME)**

- 52. Defendants repeat and reiterate the answers set forth in all paragraphs above as if fully set forth herein.
- 53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.
- 54. Paragraph 51 of the Complaint does not contain allegations requiring response, however, to the extent that a response is required, Defendants deny all allegation.
- 55. Defendants deny the allegations contained in paragraph 55 of the Complaint.
- 56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.
- 57. Defendants deny the allegations contained in Paragraph 57 of the Complaint, and deny that Plaintiffs are entitled to any relief whatsoever.

**SECOND CLAIM**  
**(NYLL - UNPAID OVERTIME)**

- 58. Defendants repeat and reiterate the answers set forth in all paragraphs above as if fully set forth herein.
- 59. Paragraph 59 of the Complaint does not contain allegations requiring response, however, to the extent that a response is required, Defendants deny all allegation.
- 60. Defendants deny the allegations contained in paragraph 60 of the Complaint.

61. Defendants deny the allegations contained in Paragraph 61 of the Complaint.

62. Defendants deny the allegations contained in paragraph 62 of the Complaint, and deny that Plaintiffs are entitled to any relief whatsoever.

**THIRD CLAIM**  
**(NYLL SPREAD OF HOURS PAY)**

63. Defendants repeat and reiterate the answers set forth in all paragraphs above as if fully set forth herein.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

65. Defendants deny the allegations contained in paragraph 65 of the Complaint.

66. Defendants deny the allegations contained in paragraph 66 of the Complaint and deny that Plaintiffs are entitled to any relief whatsoever.

**FOURTH CLAIM**  
**(NYLL WAGE THEFT PREVENTION ACT – FAILURE TO PROVIDE ANNUAL WAGE NOTICES)**

67. Defendants repeat and reiterate the answers set forth in all paragraphs above as if fully set forth herein.

68. Paragraph 68 of the Complaint does not contain allegations requiring response, however, to the extent that a response is required, Defendants deny all allegation.

69. Defendants deny the allegations contained in Paragraph 69 of the Complaint.

70. Defendants deny the allegations contained in Paragraph 70 of the Complaint and deny that Plaintiffs are entitled to any relief whatsoever.

**FIFTH CLAIM**  
**(NYLL WAGE THEFT PREVENTION ACT – FAILURE TO PROVIDE WAGE STATEMENTS)**

71. Defendants repeat and reiterate the answers set forth in all paragraphs above as if fully set forth herein.

72. Paragraph 72 of the Complaint does not contain allegations requiring response, however, to the extent that a response is required, Defendants deny all allegation.

73. Defendants deny the allegations contained in paragraph 73 of the Complaint.

74. Defendants deny the allegations contained in paragraph 74 of the Complaint and deny that Plaintiff is entitled to any relief whatsoever.

#### **AFFIRMATIVE DEFENSES**

75. Without assuming the burden of proof as to any of the following defenses where the law does not impose such burden on Defendants, Defendants assert the following defenses and reserve the right to amend and add further defenses.

##### **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

76. Plaintiffs fail to state a claim upon which relief may be granted.

##### **AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

77. Plaintiffs' Complaint should be dismissed, in whole or in part, to the extent that it is barred by the applicable statutes of limitation or the failure to exhaust administrative remedies.

##### **AS AND FOR THE THIRD AFFIRMATIVE DEFENSE**

78. Plaintiff's claims, or the claims of the proposed class or collective, are in whole or in part *de minimis*.

##### **AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE**

79. Plaintiff's claims are barred or should be reduced, in whole or in part, due to Plaintiffs' failure to use such means as are reasonable under the circumstances to avoid or minimize the damages that they allege, mitigate the alleged damages, or avail themselves of preventative or remedial measures.

##### **AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

80. Plaintiffs' claims may be barred to the extent the Plaintiff knowingly and intentionally did not complain of any alleged wage and hour violations to Defendants in bad faith to purposefully precipitate a claim.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

81. Plaintiffs' claim for damages are barred or limited by Defendants' good faith efforts to comply with applicable law under the Portal-to-Portal Act, and Plaintiff's Complaint cannot establish willful violation of the FLSA.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

82. To the extent payments were made in good faith and in conformity with and in reliance on an administrative regulation, order, ruling, approval, interpretation, administrative practice, and/or enforcement policy of the United States Department of Labor and/or New York State Department of Labor, Defendants cannot be liable for relief or recovery.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

83. Plaintiffs' claims are barred or should be reduced, in whole or in part, by exclusions, exceptions, credits, recoupment or offsets permissible under the FLSA and the New York Labor Law.

**AS AND FOR A NINTH AFFRIMATIVE DEFENSE**

84. Plaintiff's claims are barred, in whole or in part, under the doctrines of waiver, laches, estoppel, ratification, acquiescence, or unclean hands.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

85. Plaintiff's claims, or the claims of the proposed class or collective, are barred, in whole or in part, under the doctrine of payment as Defendants have already tendered some or all of the payments claimed to be owed.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

86. Plaintiffs' claims are barred, in whole or in part, under the Doctrine of Avoidable Consequences or Ellerth/Faragher Defense.

WHEREFORE, for the foregoing reasons, Defendants requests that judgment be granted as follows:

A. Dismissing the Complaint;

B. Awarding such other and further relief as this Court deems just and proper, including legal fees, costs and disbursements, and interest on the foregoing.

Dated: April 30, 2018  
New York, NY

VARACALLI & HAMRA, LLP

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